Chapter 18
Public Offers of Shares

Here, basic guidance to the end-of-chapter questions will be provided.

1. Define the following terms:
- **securities;**
- **placing;**
- **rights issue;**
- **listing;**
- **premium listing;**
- **prospectus;**
- **passporting.**

Term	Definition
securities	Shares or debentures (CA 2006, s 755(5))
placing	Where a company (or a bank acting on its behalf) offers its shares to a person or limited group of persons
rights issue	An offer to sell shares that is made to the company's existing shareholders
listing	The process whereby a company applies for its securities to be admitted to the official list
premium listing	A listing of equity shares that requires compliance with a series of rules that go beyond the EU requirements (i.e. beyond the rules that apply to a standard listing)
prospectus	A document, issued by a company that offers transferable securities to the public, that provides information about the company and the securities to be offered
passporting	A prospectus approved in one EEA Member State will be regarded as approved in any other EEA Member State

2. State whether each of the following statements is true or false and, if false, explain why:
- **the FCA acts as the UK Listing Authority;**
- **a private company that offers its shares to the public commits a criminal offence;**
- **an offer for subscription occurs where a company allots shares to an investment bank, and the bank then offers them to the public;**
- **any public company can apply to have its securities listed;**
- **a company only needs to publish a prospectus if it is to offer its shares on the Main Market of the London Stock Exchange;**
- **a prospectus must be approved by the FCA before it is published.**

- **The FCA acts as the UK Listing Authority:** This statement is true (although they FCA has since stated that it plans to phase out the use of the term 'UK Listing Authority').
- **A private company that offers its shares to the public commits a criminal offence:** This statement is false. Under the CA 1985, a criminal offence was committed if a private company offered to sell its shares to the public. However, this is no longer the case and the CA 2006 instead provides for a range of civil remedies (e.g. a court order restraining the contravention or requiring the company to re-register as public).
- **An offer for subscription occurs where a company allots shares to an investment bank, and the bank then offers them to the public:** This statement is false. What is described here is an offer for sale. An offer for subscription occurs where the company offers its shares for sale to the public (although a bank may be appointed to make the offer on behalf of the company).
- **Any public company can apply to have its securities listed:** This statement is false. For example, 'old' public companies are not permitted to apply for a listing.
- **A company only needs to publish a prospectus if it is to offer its shares on the Main Market of the London Stock Exchange:** This statement is false. A prospectus is required if the company (i) offers transferable securities to the public in the UK, or; (ii) it requests the admission of transferable securities onto a UK regulated market.
- **A prospectus must be approved by the FCA before it is published:** This statement is true.

3. 'The EU has had a major impact upon the law relating to the public offers of shares and, as a result, the UK's withdrawal from the EU will have serious repercussions for UK securities regulation.' Discuss.

Introduction

- Every essay should begin with a succinct introduction that demonstrates that you understand the essay question. Briefly explain what the essay is about and set out what the essay will discuss and how it will be structured.
- This question requires you to discuss the potential effects of Brexit on the law relating to pubic offers of shares.
- It should be noted that the effects of Brexit will depend upon the type of Brexit that the UK undergoes and the withdrawal and trade deals that are struck post-Brexit.

The influence of EU law

- It is first worth looking at the influence that EU law has had on the law in this area. In order to achieve free movement of capital, the EU recommended that an integrated financial market be created in order to harmonise laws throughout the Member States.
- The result was the passing of a number of key directives which have had a significant influence on UK law. Most notably, the Listing Rules, the Prospectus Rules and the Disclosure, Guidance and Transparency Rules (which form the bulk of the UK's listing regime) were all passed in order to implement EU directives.
- An effect of the European Union (Withdrawal) Act 2018 is that directly applicable EU law will be converted into domestic law on exit day and Acts of Parliament that

implement EU law will remain in force on exit day. Accordingly, in the short term little will change, but as the UK will no longer be bound by EU law, EU-derived law could be modified or repealed. The possibility for EU law and UK law to diverge would exist in a way that was not possible when the UK was a Member State.

Listing requirements

- The current requirements for listing are derived from EU legislation and apply to ‘regulated markets’. Upon leaving the EU, these requirements would be preserved initially, but it is possible that the requirements for securities to be listed may be amended in the future.

Passporting

- One notable change involves passporting. Under EU law, a FCA-approved prospectus would be regarded as approved in any other EEA Member State. This is extremely useful as companies that wish to offer their shares in other EEA states would not need to have their prospectuses approved in each state.
- Upon leaving the EU, it is likely that UK-registered companies will lose their passporting rights.

Conclusion

- Every essay should end with a conclusion. Briefly summarise the main points/arguments and, if possible, come to a conclusion regarding the essay topic (i.e. which of the opposing views has the stronger arguments).

4. The directors of Spartan Tools Ltd (ST) wish to expand their business and require a significant amount of capital to do so. The company does not wish to take on any more debt and so is considering whether this capital can be raised by re-registering the company and public and by selling spares. Accordingly, the directors seek your advice on the following:

- **what are the advantages and disadvantages of offering shares to the public as a means of raising capital;**
- **If the company did decide to offer its shares to the public, should it trade those shares on a stock exchange, and;**
- **should the company consider applying for its shares to be included on the official list?**

Advantages and disadvantages of offering shares to the public

- Before offering shares to the public, the company should weight up the advantages and disadvantages. Advantages include:
  - (a) it will allow ST to expand its shareholder base;
  - (b) it allows the company to raise finance;
  - (c) it may allow shareholders to more easily exit the company.

- Disadvantages include:
  - (a) in order to offer shares to the public, ST would need to re-register as public, with public companies being regulated more than private companies
  - (b) the offer will need to be managed carefully;
  - (c) the company may be more likely to be taken over.

Offering shares on a stock exchange

- If ST does decide to re-register as public and to offer its shares to the public, it could decide to facilitate his by offering those shares on a stock exchange.
- The advantage of this is that it can open up the share offer to wider range of persons and potentially make it more likely that all the shares offered will be sold.
- The downside is that stock exchanges have their own rules which ST will need to comply with, and these rules and the process can be burdensome and costly.

Listing shares

- ST could eventually decide whether or not it wants to apply for its shares to be entered into the official list. The advantages of this are:
  - (a) listed companies can have access to significant amounts of capital;
  - (b) as listed securities are traded on FCA-approved markets, buyers can buy with confidence;
  - (c) listed companies gain access to markets that are not available to other companies (e.g. the Main Market on the London Stock Exchange);
  - (d) there is prestige attached to being a listed company, and;
  - (e) listed companies have access to certain benchmarking tools and indices (e.g. the FTSE 100, 250 and 350).
- However, the disadvantages of listing are:
  - (a) there are significant eligibility requirements that will need to be satisfied;
  - (b) the listing process is complex and can be costly;
  - (c) once a company’s securities are listed, there are ongoing costs;
  - (d) listed companies are subject to considerably more regulation that other companies (e.g. the Listing Rules) and the UK Corporate Governance Code may become relevant.